

1 BILL NO. S-97-08-28

2 SPECIAL ORDINANCE NO. S-84-97

3 AN ORDINANCE approving Contract STREET  
4 LIGHTING FACILITY - RENOVATION AND  
5 ADDITION, 335 E. MURRAY STREET, FORT  
6 WAYNE, IN between HAROLD MCCOMB & SON,  
7 INC. and the City of Fort Wayne, Indiana, in connection with  
8 the Board of Public Works.

9 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF  
10 THE CITY OF FORT WAYNE, INDIANA:

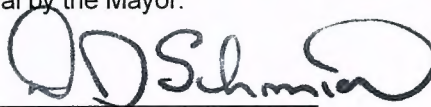
11 SECTION 1. That the Contract for **STREET LIGHTING FACILITY -**  
12 **RENOVATION AND ADDITION, 335 E. MURRAY STREET, FORT WAYNE,**  
13 **IN** by and between HAROLD MCCOMB & SON, INC. and the City of Fort Wayne,  
14 Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and  
15 approved in all respects, respectfully for:

16 Street Lighting Facility - Renovation and Addition, 335 E. Murray  
17 Street, Fort Wayne, IN;

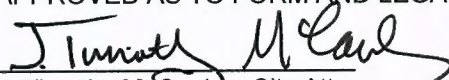
18 involving a total cost of ONE HUNDRED SEVENTY-ONE THOUSAND TWO  
19 HUNDRED AND NO/100 DOLLARS - (\$171,200.00).

20 SECTION 2. Prior Approval has been requested from Common Council on  
21 AUGUST 26, 1997. Two copies of said Contract are on file with the Office of the City Clerk  
22 and made available for public inspection, according to law.

23 SECTION 3. That this Ordinance shall be in full force and effect from and after  
24 its passage and any and all necessary approval by the Mayor.

25   
26 Council Member

27 APPROVED AS TO FORM AND LEGALITY

28   
29 J. Timothy McCaulley, City Attorney  
30



AIA Document A101

# Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

1987 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.*

*The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.*

This document has been approved and endorsed by The Associated General Contractors of America.

## AGREEMENT

made as of the Thirteenth day of August in the year of  
Nineteen Hundred and Ninety-Seven

**BETWEEN** the Owner: Board of Public Works of the City of Fort Wayne  
(Name and address) One Main Street  
Fort Wayne, IN 46802

and the Contractor: Harold McComb & Son, Inc.  
(Name and address) 2610 Pennsylvania Street  
Fort Wayne, IN 46803

The Project is: Street Lighting Facility - Renovation and Addition  
(Name and location) 335 E. Murray Street  
Fort Wayne, IN 46803

The Architect is: Bonar & Associates, Inc.  
(Name and address) d/b/a Bonar Group  
616 South Harrison Street  
Fort Wayne, IN 46802

The Owner and Contractor agree as set forth below.

Copyright 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, 1977, ©1987 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.



**ARTICLE 1**  
**THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 9.

**ARTICLE 2**  
**THE WORK OF THIS CONTRACT**

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

**ARTICLE 3**  
**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**3.1** The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Date of commencement will be August 23, 1997.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

**3.2** The Contractor shall achieve Substantial Completion of the entire Work not later than

*(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

One hundred fifty (150) calendar days after date of commencement.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)*

**ARTICLE 4**  
**CONTRACT SUM**

**4.1** The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of  
One hundred seventy-one thousand two hundred Dollars  
(\$ 171,200), subject to additions and deductions as provided in the Contract Documents.

**4.2** The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)*

All alternates are to be considered part of the base bid and the Work, as indicated in Addendum #4, dated July 18, 1997.

**4.3** Unit prices, if any, are as follows:

N/A



## **ARTICLE 5**

### **PROGRESS PAYMENTS**

**5.1** Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**5.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

**5.3** Provided an Application for Payment is received by the Architect not later than the last Wednesday day of a month, the Owner shall make payment to the Contractor not later than the second Wednesday day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

**5.4** Each Application for Payment shall be based upon the schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work and be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**5.5** Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**5.6** Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**5.6.1.** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in the dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

**5.6.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10 %);

**5.6.3** Subtract the aggregate of previous payments made by the Owner; and

**5.6.4** Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

**5.7** The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

**5.7.1** Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to one hundred percent ( 100 %) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

**5.7.2** Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

**5.8** Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

## **ARTICLE 6**

### **FINAL PAYMENT**

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

**7.1** Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**7.2** Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

N/A

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

**7.3** Other provisions:

## **ARTICLE 8**

### **TERMINATION OR SUSPENSION**

**8.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

**8.2** The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.



**ARTICLE 9**  
**ENUMERATION OF CONTRACT DOCUMENTS**

**9.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

**9.1.1** The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document A101, 1987 Edition.

**9.1.2** The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.

**9.1.3** The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated , and are as follows:

Document	Title	Pages
	'Contract Conditions' - See Project Manual dated April 1997	

**9.1.4** The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Pages
	'Specifications' - See Project Manual dated April 1997	

**9.1.5** The Drawings are as follows, and are dated

unless a different date is shown below:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
A1	Floor Plan & Details	April 1997
A2	Room Finish & Door Schedule	April 1997
A3	Exterior Elevations, Structural Plans	April 1997
A4	Wall Sections	April 1997
P-1	Plumbing Plan	April 1997
P-2	Plumbing Schedule	April 1997
M-1	Mechanical Plan	April 1997
M-2	Mechanical Details	April 1997
M-3	Mechanical Schedules	April 1997
E-1	Electrical Plan & Schedules	April 1997

**9.1.6** The addenda, if any, are as follows:

Number	Date	Pages
1	May 9, 1997	Add-1-1 & 'S'
2	May 28, 1997	Add-2-1
3	May 29, 1997	Add-3-1 to 09511-4
4	July 18, 1997	Add-4-1 to '4a'

Portions of addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.



**9.1.7** Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

**Owner's Required EBE Rider - Attached**

**ARTICLE 10 - CONTRACTOR'S WAIVER OF RIGHT OF MECHANIC'S LIENS**

Contractor for itself and for all other persons or corporations who may perform labor or furnish materials, supplies, tools or equipment for the construction of the improvements described herein, or for work incidental to such construction, hereby waive and relinquish all rights to claim or file notice of a mechanic's lien upon said real estate or any part thereof or upon any buildings or improvements thereon. Contractor for itself and for all subcontractors, journeymen, materialmen, mechanics and laborers, and all other persons, firms and corporations performing labor and furnishing material or machinery for the construction of said building and appurtenances, do hereby agree that no lien or notice of lien shall be in any event or any circumstance whatsoever, attach to, or be claimed or filed against, said building and appurtenances, or any part thereof, and in the event the Contractor should fail to obtain the release of any liens filed, the Contractor shall indemnify, save and hold harmless the Owners from any expenses incurred in obtaining the release of such lien, including attorney fees.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

Board of Public Works  
Signature Sheet Attached

(Signature)

(Printed name and title)

CONTRACTOR

(Signature)

ALAN L. McCOMB - PRESIDENT  
(Printed name and title)



**CAUTION: You should sign an original AIA document which has this caution printed in red. An original assures that changes will not be obscured as may occur when documents are reproduced.**





**E.B.E RIDER**

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and Harold McComb & Son, Inc., hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is apparent low bidder on construction project commonly referred to as the Street Lighting Facility - Renovation and Addition, ~~which project was bid under~~ ~~Resolution Number \_\_\_\_\_~~, and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10 % of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

"Section 2. Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10 % of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10 % of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request of Waiver form on which he/she will provide a written description of the efforts taken to comply with the participation goal."

NOW THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application of "Request of Waiver". Said Request of Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.

4. Determination of Waiver Request: The Contract Compliance Department of the City of Fort Wayne shall examine all Request for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Request of Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se: In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.



6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 13<sup>th</sup> day of August, 1997.

By:


 PRES.  
Contractor - McComb

By:

Board of Public Works

  
Linda Buskirk, Chairman

C. James Owen, Member

  
John Stafford, Member

ATTEST:

  
Patricia J. Crick, Clerk

**DIGEST STREET**

**TITLE OF ORDINANCE:** Contract for Street Lighting Facility - Renovation and Addition, 335 E. Murray Street, Fort Wayne, IN

**DEPARTMENT REQUESTING ORDINANCE:** Board of Public Works

**SYNOPSIS OF ORDINANCE:** The Contract for Street Lighting Facility - Renovation and Addition, 335 E. Murray Street, Fort Wayne, IN. Harold McComb & Sons is the Contractor. PRIOR APPROVAL REQUESTED ON August 26, 1997.

**EFFECT OF PASSAGE:** Renovation and addition will be made.

**EFFECT OF NON-PASSAGE:** Renovation and addition will not be made

**MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS)** \$171,200.00(1997 Building Corporation Lease)

**ASSIGNED TO COMMITTEE (PRESIDENT):** \_\_\_\_\_



Read the first time in full and on motion by Belmont,  
and duly adopted, read the second time by title and referred to the Committee on  
Finance, (and the City Plan Commission for recommendation)  
and Public Hearing to be held after due legal notice, at the Common Council Conference  
Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_,  
the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_  
o'clock \_\_\_\_\_ M., E.S.T.

DATED: 8-26-97

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Belmont,  
and duly adopted, placed on its passage. PASSED  
by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BENDER	<u>✓</u>			
CRAWFORD	<u>✓</u>			
EDMONDS	<u>✓</u>			
HALL	<u>✓</u>			
HAYHURST	<u>✓</u>			
HENRY	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			

DATED: 9-9-97

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana,  
as (ANNEXATION) \_\_\_\_\_ (APPROPRIATION) \_\_\_\_\_ (GENERAL) \_\_\_\_\_ (SPECIAL) \_\_\_\_\_

(ZONING) \_\_\_\_\_ ORDINANCE \_\_\_\_\_ RESOLUTION NO. S-84-97  
on the 9th day of September, 1997

ATTEST Sandra E. Kennedy SEAL Thomas P. Henry  
SANDRA E. KENNEDY, CITY CLERK PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the  
10th day of September, 1997,  
at the hour of 11:30 o'clock \_\_\_\_\_ M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 10th day  
of September, 1997, at the hour of 7:00  
o'clock \_\_\_\_\_ M., E.S.T.

Paul Helmke  
PAUL HELMKE, MAYOR

BILL NO. S-97-08-28

REPORT OF THE COMMITTEE ON FINANCE

DONALD J. SCHMIDT - JOHN N. CRAWFORD - CO-CHAIR  
ALL COUNCIL MEMBERS

WE, YOUR COMMITTEE ON FINANCE TO WHOM WAS  
REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract STREET  
LIGHTING FACILITY - RENOVATION AND ADDITION, 335 E. MURRAY STREET, FORT  
WAYNE, IN between HAROLD MCCOMB & SON, INC. and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<i>DJ Schmidt</i>			
<i>Robert Hall</i>			
<i>John A. Crawford</i>			
<i>Robert Carpio</i>			
<i>Michael J. Miller</i>			
<i>Martin A. Burt</i>			
<i>Thomas E. Harkness</i>			
<i>Clarence R. Edmonds</i>			

DATED: 9-9-97

Sandra E. Kennedy  
City Clerk